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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,716	11/13/2001	Yun-Hwa Peggy Hsieh	35721/239475(5721-17)	6335
826	7590	10/20/2004	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			MOHAMED, ABDEL A	
			ART UNIT	PAPER NUMBER
			1653	

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/007,716

Applicant(s)

HSIEH, YUN-HWA PEGGY

Examiner

Abdel A. Mohamed

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

ACKNOWLEDGMENT TO AMENDMENT, REMARKS, DECLARATION, STATUS OF THE APPLICATION AND CLAIMS

1. The amendment, remarks and 1.132 declaration filed 7/23/04 are acknowledged, entered and considered. In view of Applicant's request claims 7-9, 11, 12 and 14-16 have been amended. Claims 1-16 are now pending in the application. The objections to the specification, claims and abstract and the rejections under 35 U.S.C. 102(b) and 35 U.S.C. 103(a) over the prior art of record and partially the rejection under 35 U.S.C. 112, second paragraph are withdrawn in view of Applicant's amendment, remarks and declaration filed 7/23/04. However, the partial rejection under 35 U.S.C. 112, second paragraph is maintained for the same reasons discussed in the previous Office action.

It is noted that Applicant has amended the rejected claims under 35 U.S.C. 112, second paragraph partially as suggested by the Examiner, rendering the rejection pertaining thereto moot. Thus, the rejection for the claims which have been amended according to the Examiner's suggestion have been withdrawn, but, issues in the claims which have not been amended and have been argued by Applicant are maintained for the same reasons discussed in the previous Office action as reiterated below:

CLAIMS REJECTION-35 U.S.C. § 112^{2nd} PARAGRAPH

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Art Unit: 1653

2. Claims 1-10 and 16 remain rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite in the recitation "substantially homogenous" because it is unclear as to how much the type II-like collagen is homogenous. Amendment of the claim to recite the limitation of claim 4 or claim 5 or claim 6 or incorporating the limitations as defined on page 7, lines 13-22 in the instant specification are suggested.

Claim 16 is indefinite in the recitation "substantially free of natural contaminants" because it is unclear as to how much the type II-like collagen is free of natural contaminants. Appropriate clarification is required.

ARGUMENTS ARE NOT PERSUASIVE

3. Applicant's arguments filed 7/23/04 have been fully considered but they are not persuasive. Applicant asserts that in no case does substantially homogeneous type II-like jellyfish collagen or free of natural contaminants encompass the collagen present in its natural source, and as such, given the guidance in the specification, one of skill in the art would be apprised of what substantially homogenous and free of natural contaminants are unpersuasive. Contrary to Applicant's assertion, one of ordinary skill in the art can not find or determine from the claims how much the type II-like collagen are homogeneous or free of natural contaminants because Applicant acknowledges on page 11 and 17, paragraph 3 on the remarks filed 7/23/04 that jellyfish contain many proteins and different types of collagens. Thus, in view of this

Art Unit: 1653

acknowledgement, "substantially" should be identified in the claims as suggested by the Examiner in order to exclude a mixture of all types of collagens and other proteins.

Thus, in view of the above, the definiteness of the claim is important to allow others who wish to enter the market place to ascertain the boundaries of protection that is provided by the claim. See *Ex parte Kristensen*, 10 USPQ 2d. 1701, 1703 (PTO Bd. App. & Inter. 1989). Hence, in order to obviate the above rejection, it is suggested that Applicant amend the claim to particularly point out and distinctly claim the subject matter, which Applicant regards as the invention.

NEW GROUND OF REJECTION

4. The following is a new ground of rejection necessitated by Applicant's amendment:

Claims 7-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7 and 11 are indefinite and confusing in the recitation "salt fractionating said collagen" because it is not clear whether the term "said collagen" is referring to acid insoluble collagen or to solubilized collagen solution or to both. Appropriate clarification is required.

Claims 12, 14 and 15 are indefinite in the recitation "substantially homogenous" for the reasons set forth in the rejection of claim 1 above.

ACTION IS FINAL, NECESSITATED BY AMENDMENT

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

CONCLUSION AND FUTURE CORRESPONDANCE

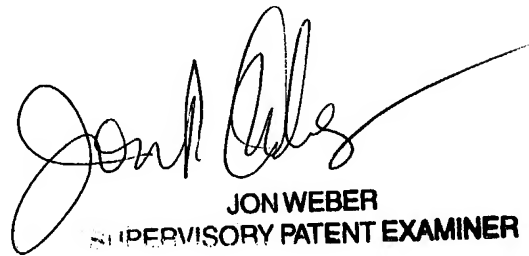
6. No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abdel A. Mohamed whose telephone number is (571) 272 0955. The examiner can normally be reached on First Friday off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon P. Weber can be reached on (571) 272 0925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1653

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JON WEBER
SUPERVISORY PATENT EXAMINER

 Mohamed/AAM
October 15, 2004